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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,130	09/20/2006	Roy Cooley	RSSO-02US	4693
26875 7590 12/27/2010 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER JANCA, ANDREW JOSEPH				
ART UNIT		PAPER NUMBER		
1774				
MAIL DATE		DELIVERY MODE		
12/27/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/599,130

Applicant(s)

COOLEY ET AL.

Examiner

Andrew Janca

Art Unit

1774

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-3 and 15-19 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 15 are rejected under 35 USC 102(b) as anticipated by GB 2392502 A to Humpish.

4. With regard to claim 1, Humpish teaches a system for calculating and reporting slump, comprising: a delivery vehicle 100 having a mixing drum 106 and hydraulic drive 108 for rotating the mixing drum (6:22-24,14:23-32), a rotational sensor 110 mounted to the mixing drum and configured to sense drum activity in the form of a rotational movement of the mixing drum; a hydraulic sensor 110 coupled to the hydraulic drive and configured to sense drum activity in the form of a hydraulic pressure required to turn the mixing drum; and a programmable processor, one or both of (200, 300), and a program memory (204, 304) storing a program that causes the processor to compute a rheological value for a mixture within the mixing drum using information from the

sensors, wherein the rotational movement of and hydraulic pressure applied to the mixing drum over a period of time is used in calculating the rheological parameter of the material within the mixing drum (6:21-7:3, 14:23-16:29, 18:13-19:28; figure 1).

5. The additional elements of claims 2 and 3 are limitations of intended use. The material within the mixing drum of Humpish may be concrete, and the history or the stability of the rotational speed of the mixing drum may be used to qualify a calculation of current slump if desired. Under the broadest reasonable interpretation, the act of qualifying a calculation may consist of process steps which may be performed by a calculating device, as mental steps which may be performed by a human being, or a combination of both. It has been held that the manner of operating an apparatus does not differentiate an apparatus claim from the prior art, if the prior art apparatus teaches all of the structural limitations of the claim. See *Ex Parte Masham*, 2 USPQ2d 1647 (BPAI 1987).

6. The additional elements of claim 15, including that the material within the mixing drum may be concrete and said processor further determines from the sensed rotational speed of or hydraulic pressure applied to the drum, or both, one or more of: adequacy of mixing of concrete, the occurrence of a concrete pour action from the mixing drum, appropriateness of a concrete discharge from the mixing drum, concrete slump values, the occurrence of a fluid discharge into the mixing drum, appropriateness of a fluid discharge into the mixing drum, effect of a fluid discharge into the mixing drum, water supply conditions, are taught by Humpish (17:5, 19:13-18).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 16-19 are rejected under 35 USC 103(a) as unpatentable over GB 2392502 A to Humpish in view of GB 2392027 A to Humpish et al.

10. With regard to claim 16, Humpish teaches that a decision may be made to whether to discharge fluid into said drum based upon rheological properties determined by said processor (21:18-22:2), but does not explicitly teach that the decision may be made by the processor. However, it has been held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art: see *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Further, Humpish et al teach a system for calculating

and reporting slump, comprising: a delivery vehicle 10 having a mixing drum 11 and hydraulic drive for rotating the mixing drum (5:11), a rotational sensor configured to sense drum activity in the form of a rotational movement of the mixing drum (3:7-8); a hydraulic sensor 19 coupled to the hydraulic drive and configured to sense drum activity in the form of a hydraulic pressure required to turn the mixing drum (5:24-26); and a programmable processor 20 (6:12-19), and a program memory storing a program that causes the processor to compute a rheological value for a mixture within the mixing drum using information from the sensors (6:12-19), wherein the rotational movement of and hydraulic pressure applied to the mixing drum over a period of time is used in calculating the rheological parameter of the material within the mixing drum (5:9-23; figure 1); and further teach that the processor determines whether to discharge fluid into said drum based upon rheological properties determined by said processor (6:24-7:3). It would have been obvious to have made the processor of Humpish decide whether to discharge fluid into the drum, as do Humpish et al: the motivation would have been to take the decision to add fluid from the operator and give it to the computer controller (Humpish et al 1:23-2:1, 7:24-4:6, 8:1-9).

11. The additional elements of claims 17-19 are limitations of intended use. A fluid may be discharged into the drum, and the fluid be a chemical additive, a superplasticizer, or water if desired. It has been held that the manner of operating an apparatus does not differentiate an apparatus claim from the prior art, if the prior art apparatus teaches all of the structural limitations of the claim. See *Ex Parte Masham*, 2 USPQ2d 1647 (BPAI 1987).

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **this action is made final**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Janca whose telephone number is (571) 270-5550. The examiner can normally be reached on M-Th 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on (571) 272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AJJ

/DAVID L. SORKIN/
Primary Examiner, Art Unit 1774